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CASE # 84-1993

Supreme Court, U.S.
FILED
JUN 21 1985
ALEXANDER L. STEVAS
CLERK

IN THE SUPREME COURT OF THE UNITED STATES

1985 Term

Victor Lepucki, Plaintiff, John Hyde, Petitioner,	)	
v.	)	On Writ of Certiorari to the U. S. Court of Appeals for the 7th Circuit
Bernard L. Van Wormer, et al, Defendants-Appellees,	)	
AND	)	
Kenneth Pazdur, et al, Plaintiffs, John Hyde, Petitioner,	)	
v.	)	
Blaw-Knox Foundry & Mill Machinery, Defendant-Appellee	)	

Petition for Writ of Certiorari

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ISSUES

1. Did the District Court judge and the Court of Appeals judges depart from the accepted and usual course of conduct?

2. Is it frivolous for Petitioner to raise issues undecided by the Supreme Court?

3. Can a court of law enter any money judgment in anything but lawful dollars?

4. Was the value measured by one dollar fixed by the Constitution?

5. Is the dollar a concept and not a tangible thing?

6. Can anything be a standard of value which has no intrinsic value?

7. Can anything be legal tender which has less value than the standard of value?

8. Can our monetary system function fairly without a standard unit of value?

9. Does obligation paper such as the federal reserve note have any intrinsic value needed so it can function as the standard of value?

10. Do we in fact have any medium of exchange in circulation today that is capable of being used as a standard unit of value?

11. As our currency today is almost exclusively federal reserve notes, what is their market value or their parity with the Spanish milled silver dollar which was adopted by the framers of the Constitution as the standard unit of value?

List of Parties

John Hyde was attorney for Plaintiff Victor Lepucki who filed suit against Defendants Inland Steel Co., Richard Smulevitz, paymaster for Inland, Bernard

Van Wormer, IRS Agent, and Donald Regan, Secretary of the Treasury. Lepucki's suit was filed in the District Court of the Northern District of Indiana, Case No. 83 C 445. Hyde appealed on behalf of himself to the U.S. Court of Appeals for the Seventh Circuit, Case No. 84-2304.

Hyde was also attorney for Plaintiffs Kenneth Pazdur et al in their suit against the Blaw-Knox Foundry and Mill Machinery Co. in the same district court, Case No. 83 C 519, from which Hyde again appealed on his own behalf to the same appellate court, Case No. 84-3041.

The United States may be entitled to notice under 28 U.S.C. 2403(a) because the Constitutionality of federal reserve notes and whether they can Constitutionally be legal tender is in issue, but the United States has actual notice by the Lepucki pleadings.

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Jurisdiction of the Supreme Court is based upon 28. U.S.C. 2101(c).

Rule 21 Citations

United States Constitution:

Article I, Section 8 - Powers of congress - The congress shall have power ...
(2) To borrow money on the credit of the United States;

* * *

(5) To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures; ...

Article I, Section 9 - ... a tax or duty may be imposed ... not exceeding ten dollars ...

Amendment 7 - Trial by jury in civil cases.-In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved ...

The Coinage Act of 1792 - Sec. 9. And be it further enacted, That there shall be from time to time struck and coined at the said mint, coins of gold, silver, and copper, of the following denominations, values and descriptions ... Dollars or Units-each to be of the value of a Spanish milled dollar as the same is now current, and to contain three hundred and seventy-one grains and four sixteenth parts of a grain of pure, or four hundred

and sixteen grains of standard silver.

United States Code -

Title 12 -

Section 152 - Lawful money reserve of associations issuing gold notes; receiving notes of other associations. Every association organized under section 151 of this title shall at all times keep on hand not less than 25 per centum of its outstanding circulation, in gold or silver coin of the United States; ... and shall be subject to all the provisions of this chapter: Provided, That, in applying the same to associations organized for issuing gold notes, the terms "lawful money" and "lawful money of the United States" shall be construed to mean gold or silver coin of the United States ...

Section 411 - Issuance to reserve banks; nature of obligation; redemption. Federal reserve notes, to be issued at the discretion of the Board of Governors of the Federal Reserve System for the purpose of making advances to Federal reserve banks through the Federal reserve agents as hereinafter set forth and for no other purpose, are hereby authorized. The said notes shall be obligations of the United States and shall be receivable by all national and member banks and Federal reserve banks and for all taxes, customs, and other public dues. They shall be redeemed in lawful money on demand at the Treasury Department of the United States, in the city of Washington, District of Columbia, or at any Federal Reserve bank.

§ 314. Standard unit of value

The dollar of gold nine-tenths fine consisting of the weight determined under the provisions of section 821 of this title shall be the standard unit of value, and all forms of money issued or coined by the United States shall be maintained at a parity of value with this standard, and it shall be the duty of the Secretary of the Treasury to maintain such parity.

§ 5103. Legal tender

United States coins and currency (including Federal reserve notes and circulating notes of Federal reserve banks and national banks) are legal tender for all debts, public charges, taxes, and dues. Foreign gold or silver coins are not legal tender for debts.

§ 5116. Buying and selling gold and silver

(a)(1) With the approval of the President, the Secretary of the Treasury may—

(A) buy and sell gold in the way, in amounts, at rates, and on conditions the Secretary considers most advantageous to the public interest; and

(B) buy the gold with any direct obligations of the United States Government or United States coins and currency authorized by law, or with amounts in the Treasury not otherwise appropriated.

(2) Amounts received from the purchase of gold are an asset of the general fund of the Treasury. Amounts received from the sale of gold shall be deposited in the general fund of the Treasury.

(b)(1) The Secretary shall buy silver mined from natural deposits in the United States, or in a territory or possession of the United States, that is brought to a United States mint or assay office within one year after the month in which the ore from which it is derived was mined. The Secretary shall pay $1.25 a fine troy ounce for the silver. The Secretary may use the coinage metal fund under section 5111(b) of this title to buy silver under this subsection.

(2) The Secretary may sell or use Government silver to mint coins, except silver transferred to stockpiles established under the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98 et seq.). The Secretary shall sell silver under conditions the Secretary considers appropriate for at least $1.292929292 a fine troy ounce.

§ 5117. Transferring gold and gold certificates

(a) All right, title, and interest, and every claim of the Board of Governors of the Federal Reserve System, a Federal reserve bank, and a Federal reserve agent, in and to gold is transferred to and vests in the United States Government to be held in the Treasury. Payment for the transferred gold is made by crediting equivalent amounts in dollars in accounts established in the Treasury under the 15th paragraph of section 16 of the Federal Reserve Act (12 U.S.C. 467). Gold not in the possession of the Government shall be held in custody for the Government and delivered on the order of the Secretary of the Treasury. The Board of Governors, Federal reserve banks, and Federal reserve agents shall give instructions and take action necessary to ensure that the gold is so held and delivered.

(b) The Secretary shall issue gold certificates against gold transferred under subsection (a) of this section. The Secretary may issue gold certificates against other gold held in the Treasury. The Secretary may prescribe the form and denominations of the certificates. The amount of outstanding certificates may be not more than the value (for the purpose of issuing those certificates, of 42 and two-ninths dollars a fine troy ounce) of the gold held against gold certificates. The Secretary shall hold gold in the Treasury equal to the required dollar amount as security for gold certificates issued after January 29, 1934.

(c) With the approval of the President, the Secretary may prescribe regulations the Secretary considers necessary to carry out this section.

(Pub L. 97-258, Sept. 13, 1982, 96 Stat. 984.)

§ 5118. Gold clauses and consent to sue

(a) In this section—

(1) "gold clause" means a provision in or related to an obligation alleging to give the obligee a right to require payment in—

(A) gold;

(B) a particular United States coin or currency; or

(C) United States money measured in gold or a particular United States coin or currency.

(2) "public debt obligation" means a domestic obligation issued or guaranteed by the United States Government to repay money or interest.

(b) The United States Government may not pay out or deliver any gold coin. A person lawfully holding United States coins and currency may present the coins and currency to the Secretary of the Treasury for exchange (dollar for dollar) for other United States coins and currency that may be lawfully held. The Secretary shall make the exchange under regulations prescribed by the Secretary.

(c)(1) The Government withdraws its consent given to anyone to assert against the Government, its agencies, or its officers, employees, or agents, a claim—

(A) on a gold clause public debt obligation or interest on the obligation;

(B) for United States coins or currency; or

(C) arising out of the surrender, requisition, seizure, or acquisition of United States coins or currency, gold, or silver involving the effect or validity of a change in the metallic content of the dollar or in a regulation about the value of money.

(2) Paragraph (1) of this subsection does not apply to a proceeding in which no claim is made for payment or credit in an amount greater than the face or nominal value in dollars of public debt obligations or United States coins or currency involved in the proceeding.

(3) Except when consent is not withdrawn under this subsection, an amount appropriated for payment on public debt obligations and for United States coins and currency may be expended only dollar for dollar.

(d)(1) In this subsection, "obligation" means any obligation (except United States currency) payable in United States money.

(2) An obligation issued containing a gold clause or governed by a gold clause is discharged on payment (dollar for dollar) in United States coin or currency that is legal tender at the time of payment. This paragraph does not apply to an obligation issued after October 27, 1977.

(Pub.L. 97-258, Sept. 13, 1982, 96 Stat. 985.)

STATEMENT OF FACTS

The Pazdur action was initiated after the trial court in the Inland action failed to give any opinion or statement on any point raised by Inland, but merely decided that none of the claims was properly pleaded. Thereafter, Plaintiffs in Pazdur were unable to decide how to finance the case and the authorized Petitioner to dismiss it. The court dismissed the action with prejudice on its own motion, doing so without any finding of fact. Petitioner had hoped that Plaintiffs would find a way to continue the fight.

In the order of dismissal, the court issued an order for Defendant to file memoranda in support of their fee request. No mention was ever made that counsel for Plaintiffs might be considered subject to an award of fees. So,

Petitioner did not appear at the hearing set for the award. At that hearing, the court fined Petitioner 2,139.97 in dollars, not in federal reserve notes. The court also denied Petitioner's former clients opportunity to obtain other counsel.

Lepucki is not appealing and the appeal is only by his counsel on the same ground that he cannot comply with the order to pay fees in dollars; and also on the ground that the action was not frivolous where slander was alleged against an Internal Revenue Service agent who asked for information to determine if the client was liable for tax and upon not receiving an answer, he informed the employer that the employee-client had lied by giving false information to the I. R. S. (rather than saying he gave no information). The gist of that case is

that an I. R. S. agent is not of high office and does not exercise great discretion in the course of his work and has no absolute or qualified privilege to injure others. The Court awarded fees and costs against the Plaintiff and his counsel without a hearing although the request for fees was made against Plaintiff and not against counsel (see Appendix).

JURISDICTION OF THE TRIAL COURT in each of the cases was based on the existence of a federal question: in Pazdur, Plaintiff objected to federal jurisdiction saying that withholding in anticipation of a possible future tax liability represents a conversion of property since no tax is payable until due on April 15th of the next year.

In Lepucki, objection was made to federal jurisdiction on the ground that

the I. R. S. agent exceeded his authority and acted as a private party, and on the ground that federal courts have no slander jurisdiction except where diversity of citizenship exists.

ARGUMENT: This Petition for a Writ of Certiorari ought to be granted for the following reasons:

I. The District Courts and the Court of Appeal for the Seventh Circuit departed from the accepted and usual course of judicial proceedings in the instant cases in that they appear not to have discerned or discussed the points raised by Plaintiff, but summarily deemed his pleadings as frivolous. It cannot be that the pleadings were frivolous because there exists no United States Supreme Court decision which holds that federal reserve notes are dollars.

Petitioner believes that he has been

charged with an accusation of frivolous conduct and abusing the processes of the Law only because he has had the temerity to characterize this nation's monetary and income tax systems as an outrageous fraud upon the people.

The lower courts refused to discuss the points that Plaintiff advanced, ignoring his efforts to distinguish prior cases or to show that they were erroneous. In the case of Edgar v. Inland, below, Trial Judge Kanne refused to allow Plaintiff's oral argument on the issue of this nation's monetary system. He wrote no opinion and, thus, gave Plaintiff no reasons for the dismissal of the case. The dismissal was not upon the merits, but upon the conclusion of the Court that a good cause of action had not been pleaded. Plaintiff did not seek to amend. However, an appeal was taken.

The Seventh Circuit Court of Appeals also refused to discuss the points that were raised, and refused to consider the possibility that the precedent upon which Appellees relied were decisions that misconstrued prior cases or misunderstood their import or were not correctly analyzed. The Appellate Court assumed the Law on Withholding was settled and that Appellants should not challenge it. The attitude seemed to be that the enactments of Congress were sufficient.

While the appeal on Inland was pending, a similar action, the Pazdur case, was commenced with Petitioner as counsel. This new case was plead in a different way than Inland in an effort to satisfy the trial court that the cause of action was plead adequately enough to justify offers of proof. This case was also heard before Judge Kanne. A motion to

dismiss was filed by Defendants. The Plaintiffs had been unable to apportion the expenses and fees in a way satisfactory to all and, so, Petitioner advised them that a dismissal would be forthcoming without an answer to the motion to dismiss. Because of Plaintiffs' continued disagreement over finances, Petitioner asked for authority to dismiss the case, which was given. Petitioner had hoped that before the Court dismissed the case on its own motion, the Plaintiffs would be able to settle their problem and resume prosecution of the case. That did not happen, and the case was dismissed by the Court which cited 26 U. S. C. 3402 (a) as authority for an employer to withhold wages. There was no discussion of Plaintiffs' attack on that provision, nor was there any discussion of the conflict of Section 3402 (a) with Section 3402

(n). Nor did the Court discuss the question of a cause of action against the employer for converting wages withheld from employees. It did not discuss the legality of taking the private property of an employee from his full pay or the impropriety of the company acting as collection agency for the I. R. S. (in Inland, the Seventh Circuit panel said that because there was no provision in the contract of employment forbidding deductions, the employer could deduct withholding "taxes," which ignored the fact that the true nature of such a provision would be to authorize the deduction which would otherwise be unlawful). Judge Kanne cited Campbell v. Amax Coal Co., 610 F.2d 701, as authority that withholding was proper. That case did not discuss the issue but merely cited U.S. v. Smith, 484 F.2d 8, a Wyoming

case, as authority for the proposition that the withholding was lawful. There is some discussion of that issue in that case, which said that Section 3402 did not violate the 5th Amendment Right against self-incrimination because (1) statements were offered to the I. R. S. (2) in a non-accusatorial setting, (3) the government had a right to gather information, and (4) the government had an unlimited power to tax.

Plaintiffs disagreed on all the above points for the following reasons:

(1) Statements made pursuant to the Withholding statutes are not offered but coerced.

(2) The information is not obtained in a non-accusatorial setting. Police have a right to question in order to find a suspect. Once they have a suspect they must respect his Constitutional rights

via a Miranda warning. In a tax case against a particular individual, there can be no pretense of seeking a suspect. The only person who can be suspected of owing a tax or who can be accused of not paying is that individual under investigation. He is the **only** suspect. Nevertheless, he is a suspect whose rights must be held inviolate. So, no questions may be asked of him without reading him his rights and he has the right to refuse to answer if he believes it **might tend** to incriminate him. The decision as to what may incriminate him lies **solely** with the government the decisions of which he cannot be required to anticipate. Thus, government may have the right to get information and it may have the right to ask a suspect for information, but that suspect has the right to refuse to give the information. If it be said that he

must give the information demanded, the maximum that he should be required to give is the raw data. He may not be required to construe the tax law and decide if and how it applies and he need not engage in complex computations in utilizing the data. Since experts cannot agree on what the law says or how it should be applied, any individual cannot be put at risk of criminal prosecution merely because he may not arrive at the same conclusion as the government, particularly since the government offers no hearing prior to a criminal prosecution.

(4) The court may be correct in saying that the power to tax is unlimited, but withholding is not a tax but a forced loan coerced in anticipation of a possible liability in the future for a tax not yet due, or payable.

Petitioner has discussed these

points in order to demonstrate to this Court that they are sound points and merit discussion whether the Court agrees with these conclusions. Petitioner is not raising these issues on appeal but mention them only to show his actions are not frivolous.

In the Inland case, the Seventh Circuit panel did not perceive the point Petitioner was making. That panel said that I was contending that federal reserve notes are not money. They are money, but Petitioner contends that they are not dollars and cannot be made a legal tender for payment of debts. This follows from a proper analysis of prior decisions of this Court.

In the Pazdur case, the Seventh Circuit awarded fees and costs against Petitioner and did not overturn the trial court's award of costs and fees against

me personally though Defendant had not requested any award against me, and even though the trial court had never indicated that Petitioner might be personally responsible for either costs or fees. Petitioner had told the clients that his representation had ended with the dismissal of the case and suggested that they obtain other counsel for the hearing on costs and fees. At the hearing, they had requested another hearing to obtain counsel. That request was denied and the Trial Judge proceeded with the hearing, and it then entered the award against me from which Petitioner appeals on the ground that the judgment is for dollars and there are no lawful dollars now in circulation so that it is not possible for me to comply with the order of the Court.

When Petitioner appealed from the

award in the Pazdur case, there was an appeal pending in the Seventh Circuit in the Lepucki case from Judge Moody in the the United States District of Indiana, Hammond division. The appeal concerned an action based on the conduct of an I. R. S. agent in Gary who asked Plaintiff for information so that a determination could be made whether a tax liability existed. Plaintiff gave no information, whereupon the agent levied a penalty against Plaintiff for giving false information. When the agent communicated to Plaintiff's employer, he, again, turned no information from Plaintiff into false information from Plaintiff. That was a clear slander which was repeated by the paymaster to co-employees of Plaintiff. The case was removed from the Lake County Superior Court to Federal Court over our objection that Federal Courts have no

common law tort jurisdiction except in diversity cases. Grounds for removal was the involvement of a federal employee. The case was then dismissed, erroneously, on the ground that the agent had total immunity, thereby, wrongly implying that the agent was a high official with large discretionary powers rather than an ordinary official with regular ministerial powers who could be sued for his torts. The trial court deemed the action frivolous and refused to consider the current trend in the courts to narrow or completely abolish the immunity doctrine, a creature of the courts.

Defendants filed a motion for an award of costs and fees from Plaintiff, without asking same of counsel. In spite of that fact, the Court entered an award for costs and fees against both Petitioner's client and Petitioner without

apportionment and without notice to Petitioner. Furthermore, no hearing was ever had on this issue. Petitioner's client appealed and the Seventh Circuit affirmed the trial court, awarding costs against Petitioner's client and against Petitioner. Fees were also awarded against Petitioner. In the same order costs and fees were awarded against Petitioner in the Pazdur case. It appears that the Seventh Circuit judges fined Petitioner for being so bold as to question precedent. Ignoring precedent is foolish, however, questioning precedent for cogent reasons should not be punished. The Supreme Court has held that meek submission is not the American way. In Laird v. Tatum, 408 U.S. 1, this Court said that:

> Those who already walk submissively will say there is no need for alarm. But submissiveness is not our heri-

> tage. The First Amendment was designed to keep government off the backs of people. The Bill of Rights was added to keep the precincts of belief and expression, of the press, of political and social activities free from surveillance. The Bill of Rights was designed to keep the agents of government and official eavesdroppers away from assemblies of the people. The aim was to allow man to be free and independent and to assert their rights against government.

Petitioner asserts that he was and is performing his right and his duty as a citizen and an attorney to follow his conscience in an attempt to correct error in the forum of the judiciary.

In "Pieces of Eight" by Dr. Edwin Vieira, Jr. (1983), Darby Printing Co., Atlanta, Ga., at 331, it is stated that the United States Supreme Court has never held federal reserve notes Constitutional. Dr. Vieira comments that the decisions of the Supreme Court are always open to question, in a reference to Smith

v. Allwright, 321 U.S. 649 (1943), 665. Whenever the validity of an act is sustained in good faith in reliance upon an erroneous interpretation of fundamental law, such a decision remains subject to reconsideration and reversal. When convinced of former error, the Court has never felt constrained to follow precedent, but has freely exercised its power to re-examine the basis of its Constitutional decisions. That is not only its prerogative, but also its duty. For that reason all Constitutional questions are always open. How then, Dr. Vieira asks, can an attorney act with professional irresponsibility by simply urging the courts to decide if the federal reserve note is unconstitutional? Further, if the Court should sustain the Constitutionality of such notes in "bad faith," and, in the words of Daly, thereby perpe-

trate "a fraud on the People," what duty would an attorney or a citizen have to acquiesce in such a decision? The answer is: none! Vieira quotes John Locke's An Essay Concerning the True Origin, Extent and End of Government, P. Laslett Ed. 1960:

> Where an appeal to the Law and constituted Judges lies open, but the remedy is deny'd by a manifest perverting of justice, and abarefaced wresting of the Laws, to protect or indemnifie the violence or injuries of some men or a Party of men, there is hard to imagine anything but a **state of war.** For whereever violence is used, and injury done, though by hands appointed to administer Justice, it is still violence and injury, however colour'd with the name, Pretences or forms of Law, the end whereof being to protect and redress the innocent, by an unbiased application of it, to all who are under it; whenever that is not bona fide done, **war is made** upon the sufferers, who, having no appeal on Earth to right them, they are left to the only remedy in such Cases: an appeal to Heaven. (emphasis added)

Vieira then asks whether the "legality"

of the federal reserve system is upheld by the courts in a manifest perverting of Justice and a barefaced wresting of the Laws without fear of criticism. Is it not, he asks, the duty of every attorney who swears to uphold the Constitution to be ever vigilant for and outspoken against any such perverting of Justice and wresting of the Law?

Petitioner, therefore, asserts that he has the right and duty to conduct himself both professionally and personally in accordance with the Constitution of the United States and that his conduct has not been frivolous in any respect, but, rather, patriotic!

Petitioner also argues that he is not frivolous in questioning the prior decisions of trial and appellate courts. Although they are entitled to respect, they cannot be taken as infallible. Any

prior decision is open to a reasonable re-examination. Circumstances did not permit the Inland Plaintiffs to come to this honorable Court; however, until an issue has been settled by this Court, we must be able to raise it again and again in the lower courts. The road to that settlement must not be hindered by unfounded charges of frivolity and the penalties that attach to such charges.

Petitioner believes that the lower courts acted improperly in accusing him of frivolous conduct because their opinions did not respond to the issues raised about the validity of prior decisions. They brooked no argument, assuming their correctness and proceeded forthwith to castigate me without substantiation. I submit that they had a duty to write opinions undergirding their rulings, and not merely to rule without

comment. Opinions setting forth the logic and reasoning of a court are always necessary to avoid the rule of man and to assure the rule of Law based upon reason and fair play, and to instruct the Bar on the views of the Bench so that lawyers may be in a better position to advise their clients as to reasonable outcomes in litigation. Here, the lower courts did not answer any of the questions or solve any of the problems which were presented. They have tried, instead, to intimidate Petitioner's clients and Petitioner into "submissiveness" by putting our duty to question precedent believed to be in error into the category of "frivolous" and penalizing a conscientious attempt to perform that duty.

II. If Petitioner's conduct is deemed frivolous by this Court and the awards of costs and fees against him

upheld, then the question arises whether it is possible to comply with an order of a federal court to pay dollars when there are no lawful dollars in circulation now, or for many years past.

A lawful judgment cannot be rendered in anything but dollars. Shaw, Savell & Albion Co., Ltd. v. Fredericksberg, 189 F.2d 554. Likewise, it is only possible to satisfy such a judgment in dollars. If dollars do not exist, the judgment cannot be enforced or satisfied. This begs the question: What is a dollar? Is it a tangible or is it an abstract concept, a measure of a tangible?

The dollar is mentioned twice in the United States Constitution, in Article I, Section 9, Clause 1 and in the 7th Amendment. It is not defined in either place. Whatever a dollar meant to the people who inserted it in the Constitution, is the

meaning that the word must have forever until the Constitution is amended and a different meaning given to it.

Referring, again, to Vieira's work, Article IX of the Articles of Confederation established a system of gold and silver coinage for the nation. A search of pages 724-5 of the Journals of the Continental Congress, 1774-89, W. Ford Fd. of 1905, reveal that a committee of Congress did recognize that the confederation of the States ought to have but one money unit by which all the various domestic and foreign coin could be measured and judged and that the unit ought to be the same as the Spanish milled dollar of silver which had long been in usage in the colonies and which was called, simply, a dollar. Soon thereafter, Congress resolved that the money unit of the United States would be a

dollar. It did not specify the weight or fineness of that dollar. Pages 499-500, 5 Journals of the Continental Congress. Vieira further tells us that in 1786, the Congressional Board of Treasury concluded that the Congress intended by that resolution to adopt the dollar that was then common in the United States as the money unit. The Board calculated that the money unit would contain 375 and 64/100s grains of find silver and would be worth as much as much as the new Spanish dollar. The Coinage Act of 1792 referred to the fact that the money unit was to be the same as the value of a Spanish milled dollar but adjusted the number of grains to 371.25 grains.

Thus, it is clear that when the framers of the United States Constitution referred to a "dollar," they meant a unit equivalent to a Spanish milled dollar.

This definition has **never been amended.** It is still our Constitutional money unit standard. The value of all other coin and currency must be determined by a reference to this standard of 371.25 grains of fine silver whatever the market value of that quantity of fine silver happens to be. This requirement has not been changed. In Blackstone's Commentaries on the Law of England (Amer. ed. 4 vo. and Appendix, 1771-3), at 276 et seq., it is stated:

> Money is a universal medium of exchange and a common standard by comparison with which the value of all merchandise may be ascertained ... in order to fix the value of the standard, the weight and fineness of the metal are taken into consideration together, and when a given weight is of a given fineness, then it is of the true standard and called sterling metal.

So, this country is now, and always has been, on a Constitutional standard of silver. Gold is only a statutory stan-

dard. The value of any statutory standard is ascertained by comparison to the Constitutional standard. Historically our nation has had a monetary system that:

1) used precious metal as money, a usage corroborated by the power given to Congress to "coin" money and by the absence of power given to "print" money or to issue bills of credit to use as money;

2) adopted a physical measure of silver, historically fixed as to weight and fineness as the national money unit;

3) regulated the value of all other coinage and currency by comparison of their various weights and fineness to that money unit;

4) acknowledged the propriety of permitting the market to trade free-

ly in gold and silver and to determine the amount of money in circulation through free coinage.

The founders of the national government attempted to insure a hard money system that would exclude everything but gold and silver coin as a circulating medium of exchange. This was accomplished by denying the States the power to emit bills of credit and by refusing to grant that power to the national government, by granting the national government the power to coin money and by denying that power to the States, and by forbidding the States to make anything but gold and silver coin a tender in payment of debt. The value of these coins was to be judged by comparing them to the standard of a dollar of silver measuring 371.25 grains of fine silver. In Craig v. Missouri, 29 U.S. 410 (1830),

442, 443, this Court said that this standard would guarantee that the real dollar would represent property and not the shadow of property.

A hard money system does not forbid the use of paper money. People may voluntarily accept whatever they wish as payment for debts. They must be free to refuse a paper tender that does not have value at par with the Constitutional standard. Veazie Bank v. Fenno, ____ U.S. ____, 19 L.Ed. 482, is often cited as authority for the proposition that the United States can issue bills of credit and that notes issued and backed by the credit of the United States are such bills of credit. But as much as that decision flies in the face of the Constitution, imputing to the federal government a power not granted, that case did not go so far as to say that such bills

could be made a legal tender. Rather than supporting federal reserve notes as legal tender, Veazie denies them the ability to become legal tender because they are not at par with the silver dollar standard. Thus, such notes may pass as money to those who are willing to accept them but they may not be forced upon anyone as legal tender.

Legal tender is our highest form of money because it is certified to have the value, as measured by the Constitutional standard, displayed upon its face. It is a guarantee that the consideration given is equal to that Constitutional standard and that it must, therefore, be accepted at its face value as equal to the consideration for which it is exchanged. Any "tender" which does not meet that standard is **debased** and may pass only for its intrinsic value and no more. Thus, if a

particular form of money does not have the value, as compared to the standard, that is displayed upon its face, it cannot pass as legal tender. This Court, in Knox v. Lee, 79 U.S. 457, while permitting bills of credit to issue "for the time being" due to an exigency which imperiled the survival of the nation, recognized that the validity of paper depended upon its redeemability in the proper coin. In other words, irredeemable paper, such as federal reserve notes, can not possess the character of legal tender because actual value can not be imparted to money by either legislative or judicial fiat. Justice Strong showed his lack of appreciation of the function of an honest monetary system in erroneously stating that it was not correct to speak of a standard of value, thereby refuting history and the intent

of the framers of the Constitution. He said that since value was subjective and an ideal, it could not be measured. Justice Strong confused worth and value. Worth is the subjective intensity of desire to possess. Value is the objective measure of the amount of tangible property one would be willing to exchange for some thing worth more to him. So, value can be measured objectively - it is a measure of the specific amount of consideration demanded in order to consummate a trade. The value of any particular good or service can be determined by ascertaining how much of such a good or service is required to make parity with the standard, i.e., the fixed amount and fineness of the substance used as the medium of exchange. Rather than establish a parity of each good or service with every other good or service, it was,

and is, more convenient to establish the parity of all goods and services with a standard measure. The dollar only performs that function if it is a true Constitutional dollar measuring 371.25 grains of fine silver, the value of which amount of fine silver is easily ascertained in the marketplace.

Justice Strong erred again in stating that the gold or silver dollar is not a standard of a dollar but a representative of it. He treated the dollar as a tangible, rather than a measure of a tangible. But, if a dollar is treated as a tangible, then its value must be determined as is the value of any other goods or services. The difficulty is in determining with what it shall be compared. If a dollar of silver is not the standard of measure, then by what standard can it be measured? There can be none other than

under the Constitution. If a dollar is properly the measure, then (a) it cannot also be tangible, and (b) it solves the problem of what is to be used as the standard. For example, a quart is not tangible, but milk measured in quarts is tangible, and, furthermore, a quart cannot be used to measure itself, there being no such thing as a quart of a quart. Under Justice Strong's scenario, a dollar of silver is only representative of the standard, but since the standard is based upon a dollar of silver, that is somewhat akin to saying that I am a representative of myself, clearly a useless and confusing tautology.

Justice Strong further erred in saying that the Court had the power to declare that, for a time, the promises of the government were the equal of the representative value determined by the

coinage acts. He would declare that because he says it is so, it is so, although it is preposterous to say that a promise to pay is equivalent to actual payment.

It is evident, then, that a dollar is a measure of a specific quantity and quality of the substance used as the medium of exchange, and affords a precise way of expressing the value of everything in terms of one commonly accepted thing. There is nothing subjective in that process. It is not necessary for an honest monetary system that the value of the substance used as the medium of exchange remain constant in its purchasing power - the free marketplace must be allowed to determine that. It is necessary only that the standard is not allowed to change in its quantity or fineness which must be as certainly fixed as is the

North Star in the heavens, so that it may provide as steady a guide to traders in the market as the Star provides a course to the mariner.

Congress may, under its power to regulate the value of coin minted by the United States, designate the weight and fineness of any such coin. Whatever value is designated, when the coin is substituted for any other consideration in a trade, the amount of coins must have value equal to the consideration to be exchanged for the coins. This is because every trade involves an exchange of consideration deemed to be of equal value. The value of that consideration is determined by the number of fractions or multiples of the standard unit of money that is needed to achieve parity with such consideration.

The private bankers who own the

federal reserve banks comprising the federal reserve system have been unfairly and unlawfully granted a special privilege. They pay only the cost of printing their notes which they then can exchange with the United States for interest bearing bonds. These bonds obligate the United States to "return" 100% of the face value of the bond **plus** interest although the bankers in fact give or loan the United States **nothing** which may validly be returned. To permit anyone to so profit without investing time, labor or material is unfair because to do so is to allow that individual or group of individuals to enjoy the fruits of the labor of others without having contributed anything or without having produced anything of a tangible nature, i. e., without earning it.

The bankers are further allowed to

loan whatever multiple of the face value of each note and bond created by the system which the reserve requirements allow them to loan. Such reserve requirements are, of course, under the control of the system itself. These debt instruments are deceitfully referred to as "dollars." Real dollars are a measure of **wealth.** Debt instruments do not represent real wealth, but only a potential claim upon real wealth at some future date. To declare such an obligation to be of the same value as the real wealth it promises later violates the rules of economics and trade, the principles of truth and honesty, natural Law, and the Law of God. The natural object of trade is to get as much as one gives and if this does not happen there will be no trade - unless the government interferes. The only paper that will pass in trade is paper that is re-

deemable on demand at par in Constitutional coin - unless the government interferes.

Inasmuch as many deals are made for a price expressed in dollars, it might be argued that the people involved in such deals intended to use federal reserve notes denominated in dollars, and not to use Constitutional dollars. This argument could have validity only if the notes did not masquerade as Constitutional dollars and the users could be presumed to know the difference. Nevertheless, such an argument cannot be advanced in the case of judgments of courts. As creatures of the Constitution, they must give judgments in Constitutional dollars which have as their standard the Spanish milled dollar of silver. Courts do not have the option of merchants who may, if they so choose,

deal in negotiable or non-negotiable paper. Those charged with upholding the Constitution cannot order payment in paper deemed to be a legal tender but which in fact has no real present worth, or value. Where judgments of courts are concerned, it is not a matter of equalizing considerations between those who voluntarily agree to an exchange. The judgments of courts are involuntary as against whom they are rendered.

When a government compels its suppliers to use federal reserve notes, it is, in effect, **forcing** them to extend credit to the government, i.e., make a loan to the government. The creditor then passes this paper on to another who must accept it in exchange for his goods or services as if it were a dollar - even though it may be valued intrinsically at a minute fraction of a dollar.

Justice Strong's error is perpetuated by the belief that a dollar is a tangible rather than an abstract measure. Under this belief, the object of a trade is viewed as the dollars one is to receive, a fallacious perspective. If one party to a trade agrees to accept dollars he should do so because he expects to be able to get value equal to the value of those dollars in terms of the standard unit of money - 371.25 grains of fine silver. If his price is $10, he is not bargaining for 10 dollars but for 371.25 grains of fine silver times 10, or 3712.5 grains of fine silver. The object of a trade is the medium of exchange and not the expression by which it is measured. We do not trade for measures, but for valuable properties. Congress was given the power only to coin money; so, if paper is used at all it must only be a

substitute for coin just as coin is a substitute for any other consideration in kind. If paper cannot be immediately converted to coin, measured in the standard unit of money, then it cannot have the character of legal tender.

Paper was originally conceived as a representative of money, i.e., because coins are heavy and bulky and inconvenient to carry. So, paper was originally issued as a warehouse receipt for metal. That must still be its only function **if it is to be lawful money**, in fact, and not just in name. Title 12 U.S.C. 152 says that the lawful money of the United States is its gold and silver coin and does not grant anything else that status.

Historically, paper money in this country was not misrepresented as legal tender - it was not claimed that a gold certificate was a dollar but rather such

certificates displayed the statement that upon presentation of the certificate to the proper authorities, $10 in gold would be paid to the bearer. A certification upon the face of silver certificates guaranteed that the dollars of silver indicated were on deposit in the U. S. Treasury payable on demand to the bearer. The early federal reserve notes promised to pay dollars to the bearer but also bore the statement that they were redeemable in gold or lawful money. In the 1930's federal reserve notes were introduced which promised to pay dollars on demand but were redeemable only in lawful money without mention of gold or of silver. In the 1950's, United States Notes promised the bearer dollars on demand but had no redemption clause at all. Finally, United States notes in the 1960's were issued bearing no redemption clause

or promise to pay! This note, rather than appearing to be a claim on a certain number of dollars worth of the medium of exchange, purported to be the dollars itself. This deceitful representation flatly contradicts the holding of this Court in Bank v. Supervisors, 74 U.S. 26 (1869) wherein it was stated that a "dollar was a certain amount of gold or silver." (see also Bronson v. Rodes, 74 U.S. 229 (1869), 249)

The situation now is one in which federal reserve notes are owed to private bankers (not to bearer as are U.S. Notes) which pretend to be dollars although the holder-bearer cannot demand nor get anything of value from the issuer of the note. The final hypocrisy is the treatment of paper, in the form of federal reserve notes, denominated as 100 "dollars" as having greater value than ano-

ther identical piece of federal reserve note paper in a smaller denomination. The intrinsic value of each piece of paper is the same so that they cannot actually be dollars but only can only fraudulently claim to represent differing values.

It would actually be a violation of the Law to demand or to take redemption of these notes, as 31 U.S.C. 5118 forbids anyone from demanding payment in silver or gold. But the U.S. will give these irredeemable promises to anyone who is foolish enough to exchange precious metal for such paper. Such people will be paid at the rate of one and a quarter federal reserve notes each purporting to have a face value of a dollar according to the provisions of 31 U.S.C. 5116 and they will be paid at the rate of forty-two and nine-tenths federal reserve notes having

a face value of $1 for each ounce of gold according to the provisions of 31 U.S.C. 5117. That is about 1/5 the market value of silver and about 1/8 the market value of gold. 371.25 grains of fine silver are about 3/4 of an ounce of silver which has been trading in 1985 at about 6 such notes per ounce, or about 4 1/2 notes for 3/4 ounce. This demonstrates that federal reserve notes have no relationship or parity with the Constitutional standard's value as determined by the marketplace. In fact, we no longer have a standard unit of value, because 31 U.S.C. 314, which had made gold, 9/10 fine of such weight as determined under the provisions of Title 31, the standard, was repealed and not re-enacted. The exchange value of federal reserve notes is now vested in the private bankers who have total discretion over how much "mon-

ey" to print and how much to charge for its usage.

Justice Field in his dissent in Juilliard v. Greenman, 110 U.S. 421 notes that:

> They are promises of money but they are not money in the sense of the Constitution. The term 'money' is used in that instrument in several clauses; in one congress is authorized to borrow money; in another, to coin money; in one it is prohibited from withdrawing money from the Treasury except in consequence of appropriations made by law; and in another declaring no state shall coin money, and it is a settled rule of interpretation that the same term occurring in different parts of the same instrument shall be taken in the same sense unless there is something in the context indicating a different meaning was intended. How to coin money is to make coin out of metallic substances, and the **only** money, the value of which congress can regulate, is **coined** money, either of the mints or of foreign land.
>
> * * *
>
> The power to coin money, as declared by this court, is a great **trust** devolved upon congress carrying with it the duty of creating and of main-

> taining a uniform standard of value throughout the Union, and it would be a manifest **abuse** of this trust to give coins issued by its authority any other than their real value.
>
> * * *
>
> By debasing the coin, when once the Standard is fixed, is meant giving to the coin by their form and impress a certificate of their having a relation to the Standard different from that which in truth they possess; in other words, of giving to the coins a **false** certification of their value. (emphasis added)

Such debasement is exactly what the Juilliard Court allowed Congress to do, with respect to bills of credit - though they were to be redeemed later. Since Juilliard, Congress has gone much further and unconstitutionally granted the money power to private bankers and has also done away with redemption so that the word "dollar" on federal reserve notes is a completely false certification of its value. A federal reserve note has no value under the Constitution. This

Court, or any other court in this land, may not use any other reference point than the Constitution to measure these notes. **Real** money is never created; a particular substance is merely measured into consistent units and used **as** money. Federal reserve notes are "created," having no substantial backing of their own, and represent only a facade. Their only value is that which is imputed to them legislative, executive and judicial fiat. A declaration that they are legal tender, i.e., equivalent to the standard Constitutional dollar, is an outright, knowing lie by our government in whom we are to repose trust and faith. There is no power granted to Congress to use or to delegate to a private sector institution, like the federal reserve system, to print legal tender.

In 1864, the Supreme Court of the

State of Indiana, in Thayer v. Hedges, 22 Ind. 282, confirmed that this country was intended to have specie currency, stating:

> ... that the power to coin money is one power, and the power to declare a thing is legal tender is another and different power; that both were possessed by the States severally at the adoption of the Constitution; that by that adoption, the power to coin money was delegated to the federal government, while the power to declare a legal tender was not, but was retained by the states with a limitation, thus: Congress should have the power to coin money and no state shall make any thing but gold and silver coin a legal tender. States, then, though they cannot coin money, can declare that gold or silver coin, or both, whether coined by the Federal or the Spanish or the Mexican government shall be legal tender. And as the Congress was authorized to make money only out of coin, and the States were forbidden to make anything but coin a legal tender, a specie currency was secured in both the Federal amd State governments. There was thus no need of delegating to Congress the power of declaring a legal tender in transactions within the domain of Federal legislation. The money coined by it was the necessary medium.

It follows that Congress has no power to declare federal reserve notes a legal tender nor have courts the power to enter a judgment for such notes. It cannot be inferred that a power to declare a legal tender is an implied power needed to carry out the coining power. If coining power is properly executed the coin speaks for itself and the impress of the government certifies that it speaks truthfully. Specie money is honest money. In 1930, a dollar measured 24 grains of fine gold. The value of an ounce of gold was set at $20. 30 ounces of gold would buy a new Ford automobile priced at $600. Today a new Ford automobile will cost 9000 to 10,000 federal reserve notes, or about 30 ounces of gold.

These federal reserve notes, falsely and fraudulently designated as dollars are the **only** currency now available for

ordinary use in the United States. This is admitted in several publications printed by various federal reserve banks, for instance, Modern Money Mechanics, I Bet You Thought and The Two Faces of Debt.

The trial court and the appellate court would have us believe that these pieces of paper are lawful money. Title 12 U.S.C. 152 says that lawful money consists of the gold and silver coin of the United States; title 12 U.S.C. 411 says that these notes may be redeemed in lawful money. This alone is proof that these notes are not lawful money because if they were there would be no need to provide for their redemption in lawful money. And certainly it is sublime to suggest that as lawful money they could redeem themselves. In fact, they are irredeemable since Title 31 U.S.C. 5118

provides that our lawful money may not circulate and that no one may demand a payment in gold or silver. In effect, our lawful money has been made unlawful and deprived of the circulating characteristic of money.

To complete the charade, Title 31 U.S.C. 5103 provides that this irredeemable paper is our legal tender, transforming the promise of payment of money of account into the money of account itself. An obligation by legislative fiat has been given the value of an executed promise even before its execution. That is nothing but rank fraud.

A note is usually an account receivable to the holder - but not a federa reserve note. The holder is not the payee, rather some reserve bank is the payee and collector of the interest, as well. The interest is nothing short of

perpetual. The principal must stay in circulation if we are to have any currency at all. But there is no paper printed to pay the interest. So, interest payments deplete the circulation and mandate new issues of paper, which also bear interest. These new issues are necessary in order to maintain sufficiency of currency in circulation in an ever widening glut of these intrinsically worthless pieces of paper.

If Petitioner, and other citizens, are forced to use this fraudulent paper, it can only result in an increasingly greater taxation of our wealth to be transferred to the private banking system in order to defray the rapidly growing and voracious interest charges on the national debt. Debt service now represents three-fourths of our annual deficit. The debt is now doubling every

decade and its growth is accelerating, a previously mentioned inevitability. The Justices of this Court see this with their own eyes every day of their lives. They must agree that we can no longer afford this paper money.

If federal reserve notes are declared not to be dollars but promises to pay dollars, they could still circulate and be used by those who chose to accept a note of this kind as payment; but they would no longer function as a legal tender. The private bankers would lose their free ride on the backs of the rest of the American public who would start to receive pay equal to their productivity. Prices would tend to stabilize and inflation would be difficult to maintain, but more importantly, honesty would return to the monetary system. It wouldn't be perfect, but, as Justice John Marshall

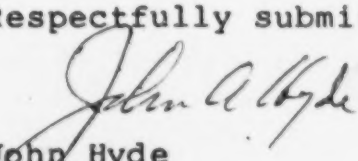
stated in Craig v. Missouri, 4 Pet. 90, at 103:

> We have been reminded by one side of the dignity of a sovereign State, and of the humiliation of her submitting herself to this tribunal, of the damage which may well result from the infliction of a wound in that dignity by the other, of the still supreme dignity of the People of the United States who have spoken their will in terms we cannot misunderstand.
>
> * * *
>
> To these admonitions we can only answer that if the exercise of that jurisdiction which has been imposed on us by the Constitution and the Laws of the United States shall be calculated to bring on this danger which shall have been indicated, or if it shall be indispensable to the preservation of the liberty and independence of these States, these are considerations which address themselves to this department which with perfect propriety may be influenced by them. This Department can listen only to the mandate of the Law and tread only that path which is marked out by duty.

Petitioner submits that whatever the political consequences may be of declaring that federal reserve notes are not

dollars, it is the duty of this Court to make that declaration and Petitioner prays that this Court will grant the Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit. Otherwise, all previous decisions concerning concerning the issue of the definition of a dollar presented herein will be repudiated.

Respectfully submitted,



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EDITOR'S NOTE

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Supreme Court, U.S.
FILED
JUN 21 1985
ALEXANDER L. STEVAS
CLERK

84-1993

IN THE SUPREME COURT OF THE UNITED STATES

1985 Term

Victor Lepucki, Plaintiff John Hyde, Petitioner,	)	
v.	)	On Writ of Certiorari to
Bernard L. Van Wormer, et al, Defendants-Appellees,	)	the U. S. Court of Appeals for the 7th Circuit
AND	)	
Kenneth Pazdur, et al, Plaintiffs, John Hyde, Petitioner,	)	
v.	)	
Blaw-Knox Foundry & Mill Machinery, Defendant-Appellee	)	

Appendix

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UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

VICTOR LEPUCKI,

Plaintiff

-vs-

CIVIL NO.
H83-445

BERNARD L. VAN WORMER,
DONALD REGAN, Secretary of
the Treasury and Employer of
Van Wormer, and Richard
SMULEVITZ and his Employer
INLAND STEEL COMPANY,

Defendants

DEFENDANTS' MOTION TO DISMISS AND
FOR COSTS AND ATTORNEYS FEES

Comes now the defendants, RICHARD SMU levitz and INLAND STEEL COMPANY, by counsel, and moves the Court as follows:

1. To dismiss the plaintiff's Complaint for the reason that this Court lacks jurisdiction over the subject matter of the plaintiff's complaint.

2. To dismiss the plaintiff's Complaint for the reason that the Complaint fails to state a claim upon which any relief

can be granted.

3. To dismiss the plaintiff's Complaint for the reason that the plaintiff has failed to join a party needed for a just adjudication under F.R.C.P. 19.

4. For an award of attorneys fees and costs in favor of these defendants, and against the plaintiff.

Glenn R. Patterson (Signature)
Glenn R. Patterson, Attorney
for Inland Steel Company

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

VICTOR LEPUCKI,
Plaintiff

v.

Civil NO.
H 83-445

BERNARD L. VAN WORMER,
et al,

Defendants

ORDER

This cause is before the Court on a Motion to Dismiss filed by defendant Smulevitz and Inland Steel Company on September 27, 1983 and on a Motion to Dismiss or in the Alternative for Sumaary Judgment filed by defendants Van Wormer and Regan on October 3, 1983. The cause originally came before the Court on July 15, 1983 when defendants Smulevitz and Inland Steel Company filed a petition for removal; the petition sought removal, under 28 U.S.C. S 1441 and S1442, of an action which plaintiff had filed in the Superior Court of Lake County, Indiana, plaintiff having responded to both Motions to Dismiss, the cause is before the court for a ruling.

Facts

The complaint which plaintiff filed in state court, and which was removed to this Court, is in three counts: Count I alleges a cause of action against defendants Van

Wormer and Regan for alleged libel/slander; Count II alleges a cause of action against defendants Inland Steel Company and Smulevitz for wrongful withholding ("conversion") of portions of plaintiff's wages for payment of federal income taxes. Count III is an action against defendants Smulevitz and Inland Steel Company for libel/slander.

Plaintiff is an employee of defendant Inland Steel Company and was an employee of that company in 1981. At the beginning of 1981 plaintiff filed with this defendant a Form W-4 Withholding Allowance Certificate asserting that he was exempt from wage withholding and had no tax liability. Defendant Inland Steel Company accepted the form and sent it to the Internal Revenue Service of the United States of America ("IRS"). The IRS, after investigating plaintiff's claimed exemption, ordered Inland Steel Company to resume withholding federal income taxes from plaintiff's wages. The IRS also im-

imposed a penalty of $500.00 plus interest against the plaintiff for providing false information on the W-4 Form submitted to the IRS via Inland Steel Company. On May 23, 1983 plaintiff was informed by Richard Smulevitz, then payroll supervisor of Inland Steel Company, that the penalty for providing false information to the IRS was being deducted from his wages at the directive of the IRS.

It is these facts that provide the basis for the complaint. Plaintiff assert that the IRS' communication to Inland Steel Company that plaintiff was being penalized for providing false information to the IRS was a libelous/slanderous accusation; plaintiff seeks damages for $1,050,000 for this alleged defamation. Van Wormer is named as a defendant because he signed the penalty levy, acting thereby in the scope of his e employment for the United States Treasury,

personified in this action by Donald Regan, Secretary of the Treasury.[1/] Plaintiff alleges that defendants Smulevitz and Inland Steel Company acted wrongfully in withholding wages to satisfy the IRS' requirements; plaintiff demands return of the wrongfully withheld wages. Count III is a claim against Smulevitz and Inland Steel Company for damages of $1,050,000; the basis of the claim is that Smulevitz' comment with regard to the reasons for withholding the penalty from plaintiff's wages was slanderous.

Van Wormer and Regan: Motion to Dismiss or in the Alternative for Summary Judgment

Van Wormer and Regan move to dismiss the action against them under Rule 12(b)(1) of the Federal Rules of Civil Procedure for lack of subject-matter jurisdiction.

1/ Included in the Motion to Dismiss or

in the Alternative for Summary Judgment submitted by the federal defendants are two affidavits, from Revenue Officer Van Wormer and from his supervisor, Thomas P. Bixler; these affidavits indicate that Van Wormer's actions in regard to plaintiff were at all times "procedurally and administratively in accordance with the appropriate sections of Internal Revenue Manual 5300, et seq."

Plaintiff admits in his complaint that the actions he characterizes as defamation were taken by defendant Van Wormer in the scope of his employment as an agent of the United States of America; Regan is also sued in his capacity as an official of the United States of America.

Government officials sued for defation based upon actions taken in the official scope of their duties are protected from liability by an absolute immunity created by federal common law.

Doe v. McMillan, 412 U.S. 306 (1973); Expeditions Unlimited Aquatic Enterprises, Inc. v. Smithsonian Inst., 566 F.2d 289 (D.C. Cir. 1977), cert. denied 438 U.S. 915; Bush v. Lucas, 647 F.2d 573 (10th Cir., 1981), cert granted 102 S.Ct. 3481, affirmed 103 S.Ct. 2404; Scherer v. Manow, 401 F.2d 204 (7th Cir., 1968), cert. denied 393 U.S. 1084. So long as the act complained of is encompassed within "matters committed by law to his control or supervisicn'", the official is immune from civil defamation suits. Baer v. Matteo, 360 U.S., 564, 573-574 (1959), quoting Spalding v. Vilas, 161 U.S. 483 (1895). Plaintiff admits the communication at issue was made within the scope of Van Wormer's official duties as a revenue officer; therefore, Van Wormer and, derivatively, Regan are absolutely immune from suit.

The Court will, therefore, dismiss

plaintiff's action against Van Wormer and Regan. The dismissal will be entered pursuant to rule 12(b) (6) of the Federal Rules of Civil Procedure, dismissal for failure to state a claim upon which relief may be granted, despite defendants' motion for dismissal under Rule 12(b) (1) for lack of subject-matter jurisdiction.

Absolute immunity is a complete defense to an action for defamation; once established, it defeats liability entirely. W. Prosser, Handbook of the Law of Torts S114 (1971). When a complaint alleges facts that constitute an absolute defense to the claim asserted, that complaint "is vulnerable to a motion to dismiss for failure to state a claim upon which relief can be granted." 5 C.Wright & A.Miller, Federal Practice and Procedure S1226 (1969). The dismissal of a complain alleging defa-

mation based upon the defense of privileged communication is a dismissal for failure to state a claim under Rule 12(b) (6). Wallingford v. Zenith Radio Corp., 310 F.2d 693 (7th Cir., 1962); see generally Wright & Miller, Supra, at S3157. Therefore, it is under that rule that dismissal of this action will be entered.

Smulevitz and Inland Steel Company: Motion to Dismiss

Defendants Smulevitz and Inland Steel Company move to dismiss CountsII and III of the complaint. The Court finds the motion well-taken, and will enter an Order dismissing both claims.

Count II is for recovery for an allegedly wrongful withholding of wages. Count II fails to state a claim upon which relief may be granted; defendants were required to withhold the monies in question by a federal statute. 26 U.S.C. S3403 requires employers to withhold money due

for payment of taxes from employees' wages. And employers may not be sued for complying with the requirements of 27 U.S.C. S3404. As one court held in granting a Rule 12(b)(6) motion to dismiss a similar action, "the employer may be penalized by IRS for failure to pay the tax to it, [but] suits against it by employees for taxes withheld from the pay of such employees are statutorily barred." Chandler v. Perini Power Constructors, Inc., 520 F.Supp. 1152, 1156 (D.N.H., 1981); Ionsdale v. Smelser, 553 F.Supp. 259 (N.D.Tex., 1982). Therefore, Count II will be dismissed under Rule 12(b)(6) as failing to state a claim upon which relief may be granted.

Count III is an action for defamation based upon Smulevitz' statement to plaintiff that a penalty was being withheld from his wages, a penalty imposed for plaintiff's falsely representing to the IRS that he had no tax liability for the year in question.

A penalty was imposed upon plaintiff; that $500 penalty was imposed under 26 U.S.C. S6682. 26 U.S.C. S6682 provides for civil penalties for "[f]alse information with respect to withholding allowances." Therefore, plaintiff was penalized for false representations to the IRS, so that Smulevitz' statement was true.

Though not, perhaps, as categorical a defense as the defense of absolute immunity, truth is also a defense to an action for defamation, and is generally regarded as a complete defense to such an action. W. Prosser, Handbook of the Law of Torts S116 (1971); 18 Indiana Legal Encyclopedia, "Libel and Slander" S62; Cox Broadcasting Corp. v. Cohn, 420 U.S. 469 (1975); Curtis Pub. Co. v. Butts, 388 U.S. 130 (1967), rehearing denied 389 U.S. 889; Olinger v. American Sav. & Loan Ass'n, 409 F.2d 142 (D.C.Cir., 1969); Moore v. Credit Information Corp. of America, 673 F.2d 208 (8th

Cir.,1982). Therefore, because Smulevitz' statement was true, defendants have a complete defense to the claim asserted in Count III; in the face of such a complete defense, the Plaintiff's allegation must be dismissed under Rule 12(b)(6) for failing to state a claim upon which relief can be granted. See discussion in preceding section.

Therefore, both Counts II and III will be dismissed under Rule 12(b)(6) of the Federal Rules of Civil Procedure.

Costs

The collective defendants have moved for an award of the costs, including attorneys' fees, respectiveily incurred in this action.

Rule 54(d) of the Federal Rules of Civil Procedure permits the court to award costs "to the prevailing party" in an action. Such an award is a matter with-

in the trial court's sound discretion. Mareus v National Life Ins. Co., 422 F. 2d 626 (7th Cir.,1978); Clark v Universal Builders, Inc., 501 F.2d 324(7th Cir. 1974), cert denied 419 U.S. 1070; State of Illinois v Sangamo Const. Co., 657 F. 2d 855 (7th Cir., 1981). When an action has been dismissed for failure to state a claim, the defendant is the prevailing part. 6 J.Moore,W. Taggart & J. Wicker, Moore's Federal Practice Par. 54.70[4]; Wainwright Securities, Inc. v Wall Street Transcript Corp., 80 F.R.D. 103 (S.D.N.Y., 1978).

"The American rule concerning attorneys' fees is that fees generally are not awarded absent statutory authorization." Benner v Negley, 725 F. 2d 446, 449 (7th Cir., 1984). Defendants concede that there is no statute directing an award of costs and attorneys' fees in this action. But defendants rely upon an exception to the

so-called American rule: "The exception relevant to this case is that a district court may award fees when the losing litigant has 'acted in bad faith,vexatiously, wantonly, or for oppressive reasons.'" 725 F. 2d at 449, quoting Alyeska Pipeline Service Co. v Wilderness Society, 421 U.S. 240, 258-259 (1975). See also F.D. Rich Co. v Industrial Lumber Co., 417 U.S. 116, 129 (1974) and McCandless v Great Atlantic and Pac. Tea Co. Inc., 697 F. 2d 198,200 (7th Cir.,1983). When a litigant has acted in bad faith, it is within the "inherent authority" of the court to award costs and attorneys' fees incurred as a consequence of that bad faith. 421 U.S. at 259; 725 F.2d @ 449.

Such an award is appropriate only "if the litigant who filed the claim... acted in subjective bad faith, and...the claim...was unsupported by probable cause." Badillo v Central Steel and Wire Co. 717

F. 2d 1160, 1165 (7th Cir., 1983). Bad faith has been defined as conduct "'without at least a colorable basis in law.'" 725 F. 2d at 449, citing Analytica, Inc. v NPD Research, Inc., 708 F. 2d 1263, 1269 (7th Cir., 1983). Therefore, to warrant an award of attorney fees, there must be evidence that the Plaintiff filed an action with no colorable basis in the law; the Court finds that there is such evidence, and that an award of costs and fees is warranted.

Neither Plaintiff's defmation actions nor his action against Inland Steel Company for withholding of wages had a colorable basis in law. All the actions complained of were taken in accordance with statutes authorizing the collection of federal taxes, which Plaintiff characterizes as the "lust of the government for revenue." Plaintiff's responses to the

motions to dismiss are less legal briefs than ideological distribes asserting, among other things, that wages are not income and that dollars are not legal tender. The Seventh Circuit disposed of the former contention recently, with some asperity. United States v Kaliboski (No. 82 CR 892, decided April 24,1984, 7th Circ.) n.1. And the latter contention, like the others Plaintiff advances, is at once absurd and irrelevant to the legal issues raised.

An award of fees and costs is warranted herein because it is patently obvious that this action was instituted not for good faith reparation of an actual wrong but, rather, as a device for asserting certain philosophical beliefs regarding the tax laws of the United States and their implementation. Though Plaintiff has every right to the free expression of his beliefs in this area, he does not have the right to

exploit the judicial system of the United States, and resources of individual and corporate defendants thereof, to that end.

It is, therefore, ORDERED that Plaintiff's action against all named defendants herein be and the same is hereby DISMISSED under Rule 12(b)(6) of the Federal Rules of Civil Procedure.

It is further ORDERED that defendants" motions for costs and attorneys' fees be and the same are hereby GRANTED. Defendants are to submit bills of costs and affadavits as to attorneys' fees within ten days from the date of receipt of this Order.

ENTER: May 31, 1984

James T. Moody
JUDGE, UNITED STATES DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF INDIANA
Hammond Division

Victor Iepucki
Plaintiff

v Civil Action No.H83-445

Bernard L. Van Wormer

et al Defendants

JUDGMENT ORDER

Pursuant to this Court's order of May 31, 1984 and the verified petition for costs and attorney's fees filed by the federal defendants, Bernard I. Van Wormer and Donald Regan, it is ORDERED, ADJUDGED AND DECREED, That the federal defendants are hereby awarded $381.69 as reasonable costs and attorney's fees incurred in the above captioned case against the Plaintiff Victor Iepucki, and his attorney, John A.Hyde, jointly and severally.

Dated:

Hammond, Indiana _____ United States District Judge

JUDGMENT IN A CIVIL CASE

UNITED STATES DISTRICT COURT for the

NORTHERN DISTRICT OF INDIANA-HAMMOND

VICTOR LEPUCKI

V Docket #H 83-445

Bernard L. Van Wormer
et al

James T. Moody, Judge

X Decision by Court. This action came before the court with the judge named above presiding. A decision has been rendered.

IT IS ORDERED AND ADJUDGED

that this action is dimissed against all named defendants under Rule 12(b)(6).

FILED
June 01 1984

Richard F. Timmons
Clerk
U.S. District Court
Northern District of Indiana

Richard F. Timmons

by: Susan I. Moore Date
6/1/ 84

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

KENNETH PAXDUF, et al
Plaintiffs

vs Cause No. H 83-0519

BLAW-KNOX FOUNDRY &
MILL MACHINERY
Defendant

DEFENDANT'S MOTION TO DISMISS
AND FOR COSTS AND ATTORNEYS FEES

Comes now the defendant, Blaw-Knox Foundry & Mill Machinery, a division of White Consolidated Industries, Inc., by counsel, and moves the Court as follows:

1. To dismiss the plaintiff's complaint fof the reason that this Court lacks jurisdiction over the subject matter of the plaintiff's Complaint.

2. To dismiss the plaintiff's Complaint for the reason that the Complaint fails to state a claim upon which any relief may be granted.

3. To dismiss the Plaintiff's Complaint for the reason that the plaintiff has failed to join a party needed for a just adjudication under F.R.C.P. 19.

4. For an award of attorneys fees and costs in favor of the defendant and against the plaintiffs.

Glenn R. Patterson
Glenn R. Patterson, attorney
for Blaw-Knox Foundry and
Mill Machinery

Singleton, Levy, Crist & Johnson
9013 Indianapolis Boulevard
Highland, Indiana 46322
(219) 972-2660

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

FILED Jul 23, 1984
at _____ M
Richard F. Timmons
clerk
U.S. District Court

Kenneth Pazdur, etal
Plaintffs

vs

Cause No. H83-519

Blaw-Knox Foundry and
Mill Machinery

ORDER GRANTING DEFENDANT'S
MOTION TO DISMISS

This matter is before the court on defendant's Motion to Dismiss and for Costs and Attorney Fees filed on September 21, 1983. Plaintiff's counsel requested and was granted an extension of time until October 27, 1983, to file a response to defendant's motion. Defendant's counsel did not file a response, and therefore, pursuant to Local Rule 7(b) this matter is ripe for summary ruling.

Plaintiff's complaint was originally filed in state court and removed to this court on August 25, 1983. Plaintiff's complaint is 80 pages and consists of nine counts. In particular Count I has seventy-two separate paragraphs. Plaintiffs are employees of defendant and are fairly characterized as "tax protestors."

Plaintiffs essentially challenge the constitutionality of defendant's actions of withholding part of Plaintiffs' wages pursuant to the federal income tax laws.

Defendant argues that Plaintiffs' complaint fails to state a claim upon which any relief can be granted. The Court agrees.

Title 26 U.S.C. Sec. 3402(a) states in relevant part:

> "Every employer making payment of wages shall deduct and withhold upon such wages a tax determined in accordance with tables prescribed by the Secretary."

That the foregoing statute is constitutional and wages are income are well settled. United States v Koliboski, 732 F. 2d 1328 (7th Cir. 1984); Campbell v Amax Coal Co., 610 F. 2d 701,702 (10th Cir. 1979).

The basis of Plaintiffs' complaint is that the defendant complied with the federal statute cited above. In light

of the well settled law such a complaint is totally without merit. The filing of this complaint may, in fact, be in violation of Rule 11 of the FED.R.CIV.P.

The Seventh Circuit comments in a recent tax appeal case are appropriate. There the Court state:

> "The doors of this courthouse are of course open to good faith appeals of what are honestly thought to be erros of the lower courts. But we can no longer tolerate abuse of the judicial review process by irresponsible taxpayers who press stale and frivolous arguments, without hope of success on the merits, in order to delay or harass the collection of public revenues or for other nonworthy purposes."

Granzow v C.I.R., No.84-1036, Slip op. at 8 (7th Cir. July 13, 1984)

Defendant's request for costs and attorneys fees is taken under advisement.

Accordingly , IT IS THERFFORE ORDERED that Plaintiffs' complaint is DISMISSED with prejudice.

IT IS FURTHER ORDERED that defendand file a supporting memorandum and affidavit in support of their request for cots and fees on or before August 15, 1984.

ENTER: July 20,1984

Michael S. Kanne,Judge

Michael S. Kanne,Judge
United States District Court

JUDGMENT IN A CIVIL CASE

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

KENNETH PAZDUR ET AL

V

Docket Number
H 83 - 519

BLA-KNOX FOUNDRY & MILL MACHINERY

Judge_____

_X_ Decision by Court. This action came to trial or hearing before the Court with the judge(magistrate)named above presiding.

The issues have been tried or heard and a decision has been rendered.

IT IS OPDERED AND ADJUDGED

Plaintfff's complaint is dismissed with prejudice.

FILED
Jul. 24, 1984
at_____ M
Richard E. Timmons,Clerk
U.S. District Court
Northern District of Indiana

Clerk:
Richard F. Timmons

by Deputy Clerk
Kathleen Graska

Date
July 24, 1984

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

KENNETH PATDUR, et al

CASE NO. H 83-519

DATE: October 25,1984

DFPUTY DAVID Porkoski

PFPORTFR Daniel J. Sullivan

JUDGF Michael S. Kanne

vs

Blaw-Knox Foundry &
Mill etal

FILED
Oct. 25 1984
at _____M
Richard F.Timmons,Clerk
U.S. District Court
Northern District of Indiana

OPEN 9:55 A. M.

CLOSF 10:35 A.M.

PLTF COUNSEL	DFFT. COUNSEL
none appearing	Joel Levy
	Glenn Patterson

PROCFEDINGS: HFARING ON MOTION FOR COSTS AND ATTORNFYS FFES

Plaintiffs Pazdur,Ware and Walker present without counsel. Defense counsel, as noted, present in court. Defendant argues motion for costs; Plaintiffs pro se, respond individually. Plaintiff Walker

moves the court for continuance so that Plaintiffs might retain counsel -DENIED. Defendants reply. The Court GRANTS the motion for costs and awards the defendants costs in the amount of $2,439.97. The costs are assessed against Attorney John Hyde in the amount of $2,139.97, and against all six (6) of the Plaintiffs individually in the amount of $50.00 each. Plaintiffs have 30 days to pay the costa awarded.

In the

United States Court of Appeals

For the Seventh Circuit

No. 83-2314

JUDY EDGAR, *et al.*,

Plaintiffs-Appellants,

v.

INLAND STEEL COMPANY, a corporation,

Defendant-Appellee.

Appeal from the United States District Court for the Northern District of Indiana, Hammond Division.
No. 82-C-658—Michael S. Kanne, *Judge.*

SUBMITTED AUGUST 15, 1984*—DECIDED SEPTEMBER 21, 1984

Before CUMMINGS, *Chief Judge*, CUDAHY, and FLAUM, *Circuit Judges.*

PER CURIAM. Taxpayers appeal the dismissal of their civil rights (42 U.S.C. § 1983) and breach of contract

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* After preliminary examination of the briefs, the Court notified the parties that it had tentatively concluded that argument would not be helpful to the Court in this case. The notice provided that any party might file a "Statement as to Need for Oral Argument." Appellants have filed such a statement and requested oral argument. Upon consideration of that statement, the briefs, and the record, the request for oral argument is denied and the appeal is submitted on the briefs and record.

claims against their employer, defendant Inland Steel Company, which failed to honor their claims of exemption from withholding of federal income taxes. We affirm.

Taxpayers filed withholding exemption certificates with defendant during the 1981 and 1982 tax years. Pursuant to regulations promulgated by the United States Treasury, defendant forwarded these certificates to the Internal Revenue Service (the "IRS"), which instructed defendant to resume withholding taxpayers' federal income taxes notwithstanding their claims of exemption. Treasury Regulation § 31.3402(4)(2)-1, T.D. 7682. When defendant complied with these instructions, taxpayers brought suit in state court, seeking an injunction barring further withholding of taxes, the return of taxes previously withheld, double wages, compensatory and punitive damages, and costs and legal fees.[1] Defendant removed the case to federal district court and, on November 2, 1982, moved for dismissal on the grounds that the court lacked jurisdiction to grant the requested relief, and that the complaint failed to state a claim upon which relief could be granted. The district court granted the motion without discussion on June 16, 1983. This appeal followed.

This lawsuit represents yet another disturbing example of a patently frivolous appeal filed by abusers of the tax system merely to delay and harass the collection of public revenues. Employees have no cause of action against employers to recover wages withheld and paid over to the government in satisfaction of federal income tax liability. 26 U.S.C. § 3403. *See Pascoe v. Internal Revenue Service*, 580 F. Supp. 649, 654 (E.D. Mich. 1984); *Lonsdale v. Smelser*, 553 F. Supp. 259 (N.D. Tex. 1982); *Chandler v. Perini Power Constructors, Inc.*, 520 F. Supp. 1152

[1] Plaintiffs' claim for injunctive relief is barred by 26 U.S.C. § 7421(a), commonly known as the Anti-Injunction Act, which, absent special circumstances not present here, prohibits any suit "for the purpose of restraining the assessment or collection of any tax ... by any person."

(D.N.H. 1981).[2] Even assuming that this statute does not bar plaintiffs' action, which it does, plaintiffs cannot recover under 42 U.S.C. § 1983. Section 1983 creates a remedy to redress deprivations, under color of state law, of any right, privilege or immunity secured by the Constitution of the United States. The statute, by its express terms, is directed only to state wrongdoing. At best, defendant acted under color of federal law when it complied with the IRS instructions; but section 1983 does not protect against such acts. *See Hubbert v. U.S. Parole Commission*, 585 F.2d 857 (7th Cir. 1978); *City of Milwaukee v. Saxbe*, 546 F.2d 693 (7th Cir. 1976); *Smith v. U.S. Civil Service Commission*, 520 F.2d 731 (7th Cir. 1975). *See also Zernial v. United States*, 714 F.2d 431 (5th Cir. 1983) (levying of wages by IRS accomplished pursuant to federal law by federal agents and private parties, and therefore taxpayer failed to state cause of action under 42 U.S.C. § 1983 because this section only provides redress for actions taken under color of state law).

Plaintiffs' claims that defendant breached their employment contracts by withholding taxes from their wages must also fail. The pleadings contain no allegation that the employment contracts contained clauses requiring defendant to refrain from withholding federal taxes from their wages. In the absence of such a provision, the employer discharges its contractual obligations when it pays its employees their wages, less withholding. *Stonecipher v. Bray*, 653 F.2d 398, 401 (9th Cir. 1981), *cert. denied*, 454 U.S. 1145 (1982). *See also United States Fidelity & Guaranty Co. v. United States*, 201 F.2d 118, 120 (10th Cir. 1952).[3]

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[2] Section 3403 provides:

> The employer shall be liable for the payment of the tax required to be deducted and withheld under this chapter, and shall not be liable to any person for the amount of any such payment.

[3] We do not decide whether such a contractual term would be enforceable or void as against public policy.

Defendant requests costs and attorney's fees pursuant to Rule 38 of the Federal Rules of Appellate Procedure. We recently announced that "[a]busers of the tax system have no license to make irresponsible demands on the Courts of Appeals to consider fanciful arguments put forward in bad faith." *Granzow v. CIR*, 739 F.2d 265, 270 (7th Cir. 1984). *See also United States v. Ekblad*, 732 F.2d 562 (7th Cir. 1984). While it is unnecessary to reach plaintiffs' constitutional and statutory arguments, we note that their rambling, one hundred and sixty-one paragraph complaint contains virtually every imaginable time-worn challenge to the federal income-tax withholding system.[4] We therefore grant defendant's request for costs and reasonable attorney's fees. Defendant shall within 15 days of the filing of this order file with this court a submission as to the fees and costs they have incurred.

AFFIRMED.

A true Copy:
Teste:

Clerk of the United States Court of Appeals for the Seventh Circuit

[4] Plaintiffs argue, *inter alia*, (1) that withholding is an illegal taking without due process of law, (2) that they are not "employees" subject to taxation, (3) that withholding constitutes a form of involuntary servitude under the 13th Amendment, (4) that defendant's refusal to honor their claims of exemption infringe on their "common law copyright," (5) that wages are not income and (6) that federal reserve notes are not money. Every court that has considered any of these claims has found them to be without merit.

USCA 40227—Midwest Law Printing Co., Inc., Chicago—9-21-84—400

In the

United States Court of Appeals

For the Seventh Circuit

No. 84-2304

VICTOR LEPUCKI,

Plaintiff-Appellant,

v.

BERNARD L. VAN WORMER, et al.,

Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Indiana, Hammond Division.
No. 83 C 445—**James T. Moody**, *Judge.*

No. 84-3041

KENNETH PAZDUR, et al.,

Plaintiffs-Appellants,

v.

BLAW-KNOX FOUNDRY AND MILL MACHINERY,

Defendant-Appellee.

Appeal from the United States District Court for the Northern District of Indiana, Hammond Division.
No. 83 C 519—**Michael S. Kanne**, *Judge.*

SUBMITTED MARCH 13, 1985—DECIDED APRIL 4, 1985*

Before BAUER, POSNER, and FLAUM, *Circuit Judges.*

PER CURIAM. Our system of jurisprudence is designed to insure that all disputants with colorable claims have access to the courthouse. Relatively low barriers to entry

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* This appeal was originally decided by unreported order on April 4, 1985. See Circuit Rule 35. The Court has subsequently decided to issue the decision as an opinion.

have, however, generated an undesirable result—a deluge of frivolous or vexatious claims filed by the uninformed, the misinformed, and the unscrupulous. These claims clog court dockets and threaten to undermine the ability of the judiciary to efficiently administer the press of cases properly before it. Perhaps the greatest safeguard against this danger is the integrity and good sense of practicing lawyers who, as officers of the court, have both an ethical and a legal duty to screen the claims of their clients for factual veracity and legal sufficiency. Model Rule of Professional Conduct 3.1 (1983); Fed. R. Civ. P. 11. Lawyers have a unique opportunity to counsel restraint or recklessness, to craft imaginative arguments or to press empty challenges to well-settled principles. Because of our reluctance to constrain the discretion of attorneys in the vigorous advocacy of their clients' interests, we penalize them only where they have failed to maintain a minimum standard of professional responsibility. But we will not overlook such a failure when it occurs, in part because it evidences disdain for the public, whose claims lie dormant because frivolous suits have diverted away scarce judicial resources, disdain for adversaries, who must expend time and money to defend against meritless attacks, and disdain for clients, whose trust is rewarded with legal bills, dismissals, and court-imposed sanctions. We have consolidated the following two appeals by attorney John A. Hyde as examples of irresponsible advocacy falling below minimum professional standards and deserving of penalty.

In *Pazdur v. Blaw-Knox Foundry and Mill Machinery* (No. 84-3041), appellant John A. Hyde represented various plaintiffs who sought, among other things, (1) an injunction barring their employer from "using or tendering various federal reserve notes as any purported payment for a debt obligation unless the creditor expressly consents to receive them," (2) an injunction barring the circulation of federal reserve notes, (3) a return of all of their wages withheld pursuant to the Internal Revenue Code and Treasury Regulations, and (4) costs and fees.

Defendant removed the cause, originally filed in Indiana state court, to federal district court. On September 21, 1983 defendant moved to dismiss, and requested costs and fees. Plaintiffs moved for an extension of time to respond, which the court granted through October 27, 1983. Plaintiffs failed to file a response and the court, on July 23, 1984, dismissed the complaint with prejudice and took defendant's motion for costs and fees under advisement. Defendant filed a memorandum in support of its request as well as an affidavit of costs and fees. On August 15, 1984, plaintiffs filed a memorandum in opposition. The court ordered a hearing for October 25, 1984 on the pending motion. While three of the party plaintiffs and counsel for defendant appeared, appellant John A. Hyde, counsel for plaintiffs, did not.[1] Defendant orally moved to award costs and fees against appellant pursuant to Fed. R. Civ. P. 11 and 28 U.S.C. § 1927. The court assessed costs of $2,139.97 against appellant and costs of $50 each against the six party plaintiffs. John A. Hyde appeals from the $2,139.97 award alone.

His primary argument is that "as there are no dollars and a court can enter judgment only in dollars, no court can enter a valid judgment for money today." This outrageous contention is so absurd that it merits no response. In any event, we summarily rejected a nearly identical claim in a recent appeal in which appellant served as

[1] Appellant argues that plaintiffs authorized him to dismiss their case, and that once the district court dismissed it (although not pursuant to any request made by appellant), he did not feel compelled to attend the October 25, 1984 hearing since, in his mind, he no longer represented plaintiffs. But nothing in either Fed. R. Civ. P. 11 or 28 U.S.C. § 1927 limits a court's discretion to penalize only those lawyers who remain active on a case at the time the sanction is imposed. In any event, appellant filed a brief on behalf of plaintiffs in opposition to defendant's motion for costs and fees on August 15, 1984, long past the date on which he alleges his representation ended. Appellant either has intentionally misrepresented facts to this court, or has filed unauthorized pleadings on behalf of plaintiffs—themselves acts deserving of sanction.

plaintiffs' counsel. *Edgar v. Inland Steel Co.*, 744 F.2d 1276, 1278 n. 4 (7th Cir. 1984). Appellant also argues that he never received notice that penalties could be imposed against him and that he is entitled to a hearing before any penalty can be imposed.

We initially note that courts require notice and a hearing before they impose costs and fees against an attorney. *Cf. Hanley v. Condrey*, 467 F.2d 697 (2d Cir. 1972); *Miles v. Dickson*, 387 F.2d 716 (5th Cir. 1967). While the Notes of the Advisory Committee on Rule 11 point out that the procedure followed must comport with due process, it goes on to state that "[t]he particular format to be followed should depend on the circumstances of the situation and the severity of the sanction under consideration. In many situations the judge's participation in the proceedings provide him with full knowledge of the relevant facts and little further inquiry will be necessary." While appellant did not have explicit notice that the court would consider imposing costs and fees against *him* at the October 25, 1984 hearing, he knew that the court would consider generally the imposition of penalties. Such notice was sufficient under the circumstances of this case, and appellant, having voluntarily chosen not to attend the hearing, cannot now complain that he is entitled to additional process. The decision of the district court is affirmed.

The second appeal, *Lepucki v. Van Wormer* (No. 84-2304), involved an employee of Inland Steel Co. ("Inland"), who filed a Form W-4 Withholding Allowance Certificate claiming exemption from withholding. Inland sent the form to the Internal Revenue Service (the "IRS"), which, following an investigation, ordered Inland to resume withholding federal income taxes from plaintiff's wages. It also imposed a $500 penalty plus interest on plaintiff for providing false information on the W-4 form. Richard Smulevitz, then payroll supervisor of Inland, informed plaintiff that the penalty would be deducted from his wages pursuant to the directions of the IRS.

Plaintiff retained attorney John A. Hyde, who filed a complaint in Indiana state court asserting that IRS officials defamed plaintiff when they communicated to Inland that he was being penalized for providing false information on his W-4 form, that defendant Smulevitz repeated the slander when he relayed the information to plaintiff, and that defendants Smulevitz and Inland wrongfully withheld his wages to satisfy the IRS directive. Defendants removed the action to federal court. After the district court denied plaintiff's motion for remand, it dismissed the action against the named IRS officials, finding them absolutely immune from suit for defamation. The slander action against Smulevitz was dismissed after the court determined his statement to plaintiff to be true. The court also dismissed the claim for recovery of allegedly wrongfully withheld wages by Smulevitz and Inland, finding such an action barred by statute. 26 U.S.C. § 3403. *See Edgar*, 744 F.2d at 1278. Last, the court imposed costs and fees against plaintiff "because it is patently obvious that this action was instituted not for the good faith reparation of an actual wrong but, rather, as a device for asserting certain philosophical beliefs regarding the tax laws of the United States and their implementation. Though plaintiff has every right to the free expression of his beliefs in this area, he does not have the right to exploit the judicial system of the United States, and resources of individual and corporate defendants thereof, to that end." This appeal followed.

Plantiff first challenges the district court's denial of his motion for remand to state court. His complaint, among other things, seeks damages for libelous comments allegedly made by federal officials in the course of their employment. Such actions are removable to federal courts. 28 U.S.C. § 1442(a)(1). *See Stein-Sapir v. Birdsell*, 673 F.2d 165 (6th Cir. 1982); *Poss v. Lieberman*, 299 F.2d 358 (2nd Cir.), *cert. denied*, 370 U.S. 944 (1962). Moreover, where a defendant can properly remove one count in a complaint, he or she can remove the entire action, including pendent state law claims. *Cf. General Investment*

Co. v. Lake Shore Ry., 260 U.S. 261, 288-289 (1922); *National Audubon Society v. Dept. of Water and Power*, 496 F. Supp. 499 (E.D. Cal. 1980). Thus, the district court had jurisdiction to consider all of plaintiff's claims and did not abuse its discretion in refusing to remand the dispute back to state court. Neither did the district court abuse its discretion by awarding costs and fees to defendants for the filing of this patently frivolous suit. The rest of plaintiff's appeal consists of attorney John A. Hyde's familiar litany about the evils of federal reserve notes and other non-meritorious arguments. We affirm the district court's order.

We will no longer tolerate abuse of the judicial process by irresponsible counsel who obstinately continue to use the courts in bad faith as forums for expression of philosophic beliefs and not for the resolution of *bona fide* disputes. We have repeatedly cautioned against the filing of frivolous appeals such as these and have no hesitation imposing costs and reasonable attorney's fees, pursuant to Fed. R. App. P. 38, against attorney John A. Hyde as appellant in No. 84-3041 and as lawyer for appellant in No. 84-2304. *Granzow v. Commissioner*, 739 F.2d 265 (7th Cir. 1984); *Reid v. United States*, 715 F.2d 1148 (7th Cir. 1983) (sanctions imposed against attorney). We also impose costs against appellant Lepucki in No. 84-2304.

Last, we are referring attorney John A. Hyde to the appropriate state disciplinary bodies for investigation because of his pattern of abuse of the judicial process.

IT IS SO ORDERED.

A true Copy:
Teste:

.....
Clerk of the United States Court of Appeals for the Seventh Circuit

USCA 50234—Pandick Midwest, Inc., Chicago—5-16-85—450

JUDGMENT ORDER

UNITED STATES COURT OF APPEALS

For the Seventh Circuit

Chicago, Illinois

60604

April 4, 1985

Before

Hon. William J. Bauer, Circuit Judge

Hon. Richard A. Posner, Circuit Judge

Hon. Joel M. Flaum, Circuit Judge

No. 84-2304
VICTOR LEPUCKI
Plaintiff-Appellant

v

Barnard L. Van Wormer et al Defendants-Appelles

Appeal From the United States District Court for the Northern District of Indiana, Hammond Division No. 83 C 445
James T. Moody, Judge

No. 84-3041
KENNETH PAZDUR, ET AL
Plaintiffs-Appellants

v

BLAW-KNOX FOUNDRY AND MILL MACHINERY
Defendant-Appellee

Appeal from the United States District Court for the Northern District of Indiana, Hammond Division, No. 83 C 519
Michael S. Kanne Judge

This cause came before the Court for

decision on the record from the United States District Court for the Northern District of Indiana, Hammond Division.

On consideration whereof, IT IS ORDERED AND ADJUDGED by this Court that the judgment of the said District Court in this cause appealed from be, and the same is hereby AFFIRMED in accordance with the order of this Court entered this date. Costs in No. 84-2304 are assessed against attorney John A. Hyde and appellant Victor Iepucki. Reasonable attorneys fees in No. 84-2304 are assessed against attorney John A. Hyde. Costs and reasonable attorney's fees in No. 84-3041 are assessed against appellant John A. Hyde.

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FILED
JUL 10 1985
ALEXANDER L. STEVAS
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(3)

CASE NO. 841993
IN THE SUPREME COURT OF THE UNITED STATES
1985 TERM

JOHN HYDE, PETITIONER v. BERNARD L. VAN WORMER, DONALD REGAN, RICHARD SMULEVITZ and INLAND STEEL COMPANY, RESPONDENTS

AND

JOHN HYDE, PETITIONER v. BLAW-KNOX FOUNDRY AND MILL MACHINERY, RESPONDENT

ON WRIT OF CERTORARI TO
THE U.S. COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

MEMORANDUM FOR THE RESPONDENTS INLAND STEEL COMPANY, RICHARD SMULEVITZ, AND BLAW-KNOW FOUNDRY AND MILL MACHINERY IN RESPONSE TO THE PETITION FOR WRIT OF CERTIORARI

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Come now the Respondents, INLAND STEEL COMPANY*/, RICHARD SMULEVITZ and BLAW-KNOX FOUNDRY AND MILL MACHINERY*/, by

*/ See Appearance of Record of the undersigned counsel for corporation listings pursuant to Rule 28.1.

counsel, and in response to the Petition for Writ of Certiorari herein respectfully concur that said Petition should be granted and submit that this Court should summarily affirm the Court below, and in support thereof offer the following for the consideration of this Court.

THE FACTS

For purposes of this Memorandum, said Respondents adopt the findings and conclusions of the United States District Court for the Northern District of Indiana and of the United States Court of Appeals for the Seventh Circuit as set forth in the Petitioner's Appendix.

ARGUMENT

1. The Decision Of The Court Below Is Plainly Correct.

The Petitioner's arguments that the awards of costs and attorney's fees against the Petitioner by the District Court and the Seventh Circuit Court of Appeals are constitutionally infirm because they were entered without adequate due process and because they constitute "an order of the federal court to pay dollars when there are no lawful dollars in circulation now, or for many years past" (Petition, pages 33 and 34), are patently frivolous and vexatious in every conceivable and reasonable respect.

The United States Seventh Circuit Court of Appeals stated in a previous but related case in which the Petitioner raised substantially similar issues and arguments,

Judy Edgar v. Inland Steel Company, 744 F.2d 1276 (7th Cir. 1984) as follows:

> "This lawsuit represents yet another disturbing example of a patently frivolous appeal filed by abusers of the tax system merely to delay and harass the collection of public revenues". (Petitioner's Appendix, page 31)

The Court below justifiably characterized this litigation as frivolous and vexatious in the following language:

> "Relatively low barriers to entry have, however, generated an undesirable result - a deluge of frivolous or vexatious claims filed by the uninformed, the misinformed, and the unscrupulous. These claims clog court dockets and threaten to undermine the ability of the judiciary to efficiently administer the press of cases properly before it. Perhaps the greatest safeguard against this danger is the integrity and good sense of practicing lawyers who, as officers of the Court, have both an ethical and legal duty to screen the claims of their clients for factual veracity and legal sufficiency. Model Rule

of Professional Conduct 3.1 (1983); Fed.R.Civ.P. 11. Lawyers have a unique opportunity to counsel restraint or recklessness, to craft imaginative arguments or to press empty challenges to well-settled principals. Because of our reluctance to constrain the discretion of attorneys in the vigorous advocacy of their clients' interests, we penalize them only where they have failed to maintain a minimum standard of professional responsibility. But we will not overlook such a failure when it occurs, in part because it evidences disdain for the public, whose claims lie dormant because frivolous suits have diverted away scarce judicial resources, disdain for adversaries, who must expend time and money to defend against meritless attacks, and disdain for clients, whose trust is rewarded with legal bills, dismissals and court imposed sanctions. We have consolidated the following two appeals by attorney John A. Hyde as examples of irresponsible advocacy falling below minimum professional standards and deserving of penalty." (Petitioner's Appendix, page 35)

The Court, then, in disposing of the merits of the Appeal below, stated in response to the Petitioner's argument that "as there are no dollars and a court can enter judgment only in dollars, no court can enter a valid judgment for money today", that:

> "This outrageous contention is so absurd that it merits no response. In any event, we summarily rejected a nearly identical claim in a recent appeal in which appellant served as plaintiffs' counsel. Edgar v. Inland Steel Company, 744 F.2d 1276, 1278 n.4 (7th Cir. 1984)." (Petitioner's Appendix, pages 36 and 37)

The Court below also held, in response to the Petitioner's due process argument, that:

> "While appellant did not have explicit notice that the Court would consider imposing costs and fees against him at the October 25, 1984, hearing, he knew that the Court would consider generally the imposition

of penalties. Such notice was sufficient under the circumstances of this case, and appellant, having voluntarily chosen not to attend the hearing, cannot now complain that he is entitled to additional process." (Petitioner's Appendix, page 37)

The Court below concluded its opinion as follows:

"We will no longer tolerate abuse of the judicial process by irresponsible counsel who obstinately continue to use the courts in bad faith as forums for expression of philosophic beliefs and not for the resolution of bona fide disputes. We have repeatedly cautioned against the filing of frivolous appeals such as these and have no hesitation imposing costs and reasonable attorney's fees pursuant to Fed.R.App.P. 38, against attorney John A. Hyde as appellant in No. 84-3041 and as lawyer for appellant in No. 84-2304. Granzow v. Commissioner, 739 F.2d 265 (7th Cir. 1984); Reid v. United States, 715 F.2d 1148 (7th Cir. 1983) (sanctions imposed against attorney). We also impose costs against appellant Lepucki in No. 84-2304.

> Last, we are referring attorney John A. Hyde to the appropriate state disciplinary bodies for investigation because of his pattern of abuse of the judicial process." (Petitioner's Appendix, page 39)

Not only is the decision of the Court below plainly correct on the merits with respect to the Petitioner's argument regarding judgments in dollars, but the record of the proceedings below itself clearly shows that the Petitioner either intentionally misrepresented facts to the Federal Courts, or filed unauthorized pleadings on behalf of his clients, which is more than sufficient to justify the awards against the Petitioner. No additional process can reasonably be held to be required for the imposition of the sanctions imposed upon the Petitioner. See

Footnote 1 to the Decision of the Seventh Circuit Court of Appeals in this case. (Petitioner's Appendix, page 36).

2. Of The Three Reasonably Possible Alternative Courses Of Action Available To This Court, Issuance of the Writ and Summary Affirmance Is Most Appropriate.

Three reasonably possible courses of action are available to the Court:

a. The Court may decide to deny certiorari because of the absence of a conflict of decisions among the federal courts.

b. The Court may decide to grant certiorari and hear argument on the merits of the questions of

federal law, despite the absence of any doubt as to the correctness of the decision below.

c. The Court may decide to grant certiorari and to summarily affirm the decision of the Court below.

These Respondents respectfully submit to the Court that the third alternative is the most appropriate in this case. These Respondents, therefore, concur with the Petitioner that the Writ of Certiorari be issued, albeit for obviously very different reasons. There is nothing more important in this case than for this Court to evidence its firm resolve that it will not tolerate the examples of irresponsible advocacy, disdain for the public, disdain for the courts, disdain for adversaries,

and disdain for clients which are evidenced by the Petitioner's conduct, all of which clearly falls below the minimum professional standards which must be enforced by this Court.

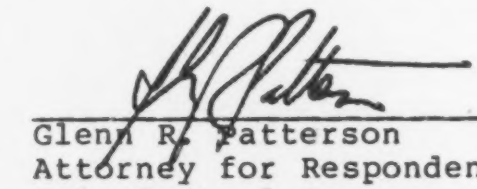
These Respondents also respectfully submit that summarily affirming the decision of the Court below is the most appropriate action in conjunction with the granting of the Petition for Writ of Certiorari, not only for the reasons set forth above, but also because such a disposition of this case would be the most expeditious way of disposing of the merits of the issues raised by the Petitioner, none of which can be better presented to this Court by the filing of briefs and the hearing of oral argument, and because it is critically important that this case be disposed of by this Court on the merits.

CONCLUSION

It is respectfully submitted by these Respondents that it is in the best interest of the public, the Federal judiciary and the members of the Federal Bar, that this Court issue its Writ of Certiorari to the Seventh Circuit Court of Appeals, and that the decision of said Court below be summarily affirmed in all respects, and, further, that the motion of these Respondents for assessment of damages and double costs pursuant to Rules 49.2 and 50.7 of the Rules of the Supreme Court of

the United States, filed concurrently herewith, be granted for the reasons set forth herein.

Respectfully submitted,



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AND

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ON WRIT OF CERTORARI TO
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MOTION FOR AWARD OF DAMAGES AND DOUBLE COSTS AGAINST PETITIONER AND IN FAVOR OF THE RESPONDENTS INLAND STEEL COMPANY, RICHARD SMULEVITZ, AND BLAW-KNOX FOUNDRY AND MILL MACHINERY

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Come now the Respondents, INLAND STEEL COMPANY*/, RICHARD SMULEVITZ and BLAW-KNOX FOUNDRY AND MILL MACHINERY*/, by

*/ See Appearance of Record of the undersigned counsel for corporation listings pursuant to Rule 28.1.

counsel, pursuant to Rules 49.2 and 50.7 of the United States Supreme Court Rules and respectfully request this Court to enter an award of damages and an award of double costs against the Petitioner and in favor of these Respondents, and in support thereof, states as follows:

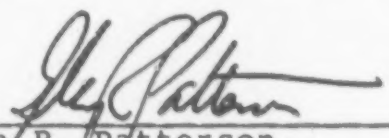
1. The Petition for Writ of Certiorari is frivolous within the meaning of that term as used in Rule 49.2 of the United States Supreme Court Rules, and as set forth in these Respondents' Memorandum filed concurrently herewith.

2. These Respondents have suffered damages in an amount equal to all attorneys' fees, and expenses associated with and arising out of the filing of said Petition for Writ of Certiorari.

3. This is an appropriate case for adjudging double costs, for the reasons set forth in these Respondents' Memorandum filed concurrently herewith.

WHEREFORE, these Respondents respectfully request entry of an award of damages and an award of double costs against the Petitioner and in favor of these Respondents.

Respectfully submitted,



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No. 84-1993 (5)

In the Supreme Court of the United States

OCTOBER TERM, 1985

JOHN HYDE, PETITIONER

v.

BERNARD L. VAN WORMER, DONALD REGAN, RICHARD SMULEVITZ AND INLAND STEEL COMPANY

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

MEMORANDUM FOR THE FEDERAL RESPONDENTS IN OPPOSITION

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In the Supreme Court of the United States

OCTOBER TERM, 1985

No. 84-1993

JOHN HYDE, PETITIONER

v.

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ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

MEMORANDUM FOR THE FEDERAL RESPONDENTS IN OPPOSITION

Petitioner, an attorney, seeks review of the decision below imposing sanctions against him personally for prosecuting frivolous litigation in the federal courts.

1. The pertinent facts[1] are as follows:

During 1981-1982 one Lepucki filed with his employer, respondent Inland Steel Co., IRS Forms W-4 claiming complete exemption from federal income tax withholding (Pet. App. 37). Inland sent the forms to the IRS, which, following an investigation, instructed the company to

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[1]We are setting forth the facts of the case involving the federal respondents. The facts of the other case considered by the court of appeals, which involved petitioner's representation of other tax protesters in litigation against a different employer, are set forth in the court of appeals' opinion (Pet. App. 34-37).

resume withholding taxes from Lepucki's wages. Lepucki and others, retaining petitioner John Hyde as their lawyer, then brought a damages action against Inland, contending inter alia that they were exempt from withholding because wages are not income and federal reserve notes are not money. See *Edgar* v. *Inland Steel Co.*, 744 F.2d 1276, 1278-1279 n.4 (7th Cir. 1984). The district court dismissed that action, and the court of appeals affirmed, noting that plaintiffs' constitutional and statutory arguments represented a "time-worn challenge to the federal income-tax withholding system" (*id.* at 1278 (footnote omitted)). The court of appeals also granted Inland's request for sanctions, in the form of attorney's fees and costs, against Lepucki and the other plaintiffs (*id.* at 1278-1279)).

Subsequently, the IRS assessed a $500 penalty against Lepucki for providing false information on his Form W-4. See 26 U.S.C. 6682. Respondent Van Wormer, an IRS employee, served a notice of levy on Inland in order to collect this liability. See 26 U.S.C. 6331. Respondent Smulevitz, then payroll supervisor of Inland, informed Lepucki that the penalty would be deducted from his wages as directed by the IRS (Pet. App. 37). Lepucki, once again retaining petitioner Hyde as his lawyer, filed a complaint in Indiana state court, asserting (1) that the IRS had defamed him when it informed Inland that he was being penalized for providing false information on his Form W-4, (2) that respondent Smulevitz repeated the slander when he so informed Lepucki, and (3) that Smulevitz and Inland wrongfully withheld taxes from his wages. Respondents removed the action to federal court. The district court dismissed the action against the named IRS officials, holding that they were immune from suit (Pet. App. 6-10). The slander action against Smulevitz was dismissed after the court determined that his statements were true (*id.* at 10-13). The district court granted respondents' motion for

costs and attorney's fees, finding that the action was instituted in bad faith (*id.* at 17). The damages were assessed against Lepucki and petitioner Hyde "jointly and severally" (*id.* at 19).

Both Lepucki and petitioner appealed to the Seventh Circuit. Their appeal was consolidated with another case in which petitioner likewise sought review of sanctions imposed on him for urging the invalidity of the Federal Reserve System as a ground for refusal to pay taxes (Pet. App. 35-36). Petitioner's primary argument on appeal was that, since "there are no dollars and a court can enter judgment only in dollars, no court can enter a valid judgment for money today" (*id.* at 36, 39). The court of appeals rejected this contention as "outrageous" (*id.* at 36). It also rejected petitioner's argument, predicated on the Due Process Clause, that the district court improperly imposed sanctions on him without affording him a hearing. Petitioner, the court of appeals noted, was aware that a motion for sanctions was pending before the district court, had filed a memorandum in opposition to that motion, and had failed to attend the hearing scheduled by the district court (*ibid.*). "[H]aving voluntarily chosen not to attend the hearing," the court of appeals concluded, petitioner "cannot now complain that he is entitled to additional process" (*id.* at 37). The court of appeals affirmed the district court's judgments in both cases and imposed further sanctions against petitioner for abusing the judicial process by filing frivolous appeals (*id.* at 39).

2. Taxpayer Lepucki has not sought review of the decision below. Attorney Hyde challenges that decision solely on his own behalf, urging that the Seventh Circuit erred in imposing sanctions, and in sustaining the district court's imposition of sanctions, on him personally. His primary contention is that the sanctions are impermissible "because there exists no United States Supreme Court decision which

holds that federal reserve notes are dollars" (Pet. 15). Petitioner appears to contend that a "dollar" must contain 371.25 grains of fine silver and that he accordingly "cannot comply with the order to pay fees in dollars" (see *id.* at 13, 44). As the court or appeals observed (Pet. App. 36), this argument is "so absurd that it merits no response." See, *e.g.*, *Veazie Bank* v. *Fenno*, 75 U.S. (8 Wall.) 533, 548-549 (1869); *Knox* v. *Lee*, 79 U.S. (12 Wall.) 457 (1870); *Nortz* v. *United States*, 294 U.S. 317, 328 (1935). Petitioner's contentions are absolutely baseless and his petition should be denied.

3. Rule 49.2 of this Court's Rules provides: "When [a] petition for writ of certiorari is frivolous, the Court may award * * * the respondent appropriate damages." The non-federal respondents have moved for an award of damages against petitioner in this case, and we believe that an award of damages is amply justified.

The questions petitioner seeks to present for review — *e.g.*, "Was the value measured by one dollar fixed by the Constitution?"; "Is the dollar a concept and not a tangible thing?"; "Can anything be a standard of value which has no intrinsic value?"; "Can our monetary system function fairly without a standard unit of value?" — are the by-now-familiar cant of the tax-protest movement. The IRS informs us that it received some 37,000 illegal protest returns in fiscal 1983, a six-fold increase over the comparable figure for 1978. "This lawsuit," as the court of appeals observed, "represents yet another disturbing example of a patently frivolous appeal filed by abusers of the tax system merely to delay and harass the collection of public revenues" (Pet. App. 31).

In some instances, participants in the tax-protest movement are unsophisticated or ignorant people who themselves are preyed upon by purveyors of tax-evasion schemes. Petitioner, by contrast, is an attorney and an officer of the court. "Perhaps the greatest safeguard against

th[e] danger [of clogging court dockets with vexatious claims] is the integrity and good sense of practicing lawyers who, as officers of the court, have both an ethical and legal duty to screen the claims of their clients for factual veracity and legal sufficiency" (Pet. App. 35). Petitioner woefully failed to discharge that duty in these cases. His conduct "evidences disdain for the public, whose claims lie dormant because frivolous suits have diverted away scarce judicial resources, disdain for adversaries, who must expend time and money to defend against meritless attacks, and disdain for clients, whose trust is rewarded with legal bills, dismissals, and court-imposed sanctions" (*ibid.*).

Petitions such as this one have only two conceivable goals — to delay the payment of damages already assessed, and to waste the resources of the private respondents, the federal government, and this Court. It is therefore respectfully submitted that the petition for a writ of certiorari should be denied, and that damages should be assessed against petitioner under Rule 49.2 of this Court's Rules.[2]

CHARLES FRIED
Acting Solicitor General

SEPTEMBER 1985

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[2]We are filing a motion for an award of damages on behalf of the federal respondents contemporaneously with this memorandum.